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New York (State) Laws, statutes, etc. Tax law, 21
June 19

THE LAW OF

TAXABLE TRANSFERS

STATE OF NEW YORK

BEING ARTICLE X. OF CHAPTER 908, LAWS OF 1896, KNOWN AS THE TAX LAW AND AS CHAPTER XXIV. OF THE GENERAL LAWS, AS AMENDED BY CHAPTER 284, LAWS OF 1897

WITH ANNOTATIONS AND FORMS

EDITED BY

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(*Of the Troy Bar.*)

AUTHOR OF "GREENE'S PRACTICE TIME TABLE"

ALBANY, N. Y.

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PREFACE.

Since the passage of the original act taxing inheritances in this state, successive legislatures have amended and modified the law repeatedly, and in 1896 all the existing statutes on the subject were repealed and their provisions incorporated into the Tax Law (Chapter 908, Laws 1896, or Chapter 24 of the General Laws), as Article X. thereof in relation to "Taxable Transfers." The legislature of 1897 adopted several amendments thereto, and during the years 1896 and 1897 a number of important decisions have been handed down by the Court of Appeals and other courts of the state.

The aim of this volume is, therefore, to present to the profession the law of taxable transfers as in force at the present time, with annotations of the various decisions relative thereto. All the important cases have been carefully digested, and while a majority of them are interpretative of the original act and its amendments, yet their application to the existing law is

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in few cases impossible of discernment. Approved forms for use in the various proceedings under the act are also given.

This much, if nothing more, may be said of the book: it is thoroughly up to date.

H. N. G.

TROY, N. Y., *June* 14, 1897.

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THE LAW OF
TAXABLE TRANSFERS

THE TAX LAW.

Ch. 908, Laws 1896, as amended by Ch. 284, Laws 1897.

ARTICLE X.

TAXABLE TRANSFERS.

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Section 220. **Taxable transfers.**—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

2. When the transfer is by will or intestate law, of property within the state, and the decedent was a nonresident of the state, at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the gran-

* So in the original.

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tor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

4. (Such tax shall be imposed) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act.

5. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

6. The tax imposed thereby shall be at the rate of

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five per centum upon the clear market value of such property, except as otherwise prescribed in the next section.

Revised and re-enacted from Laws 1892, ch. 399, § 1. Amended by Laws 1897, ch. 284, § 2.

The various acts; their application to each other and to property in general.

The Act is constitutional. (*Matter of McPherson*, 104 N. Y. 306.)

The particular law of taxable transfers in force at the time of the testator's death is the one which governs in the determination and fixing of the tax. (*Matter of Milne*, 76 Hun 328; *Matter of Moore*, 90 Hun 162; *Matter of Sterling*, 9 Misc. 224; *Matter of Roosevelt*, 143 N. Y. 120.)

The original Act did not take effect until June 30, 1885, the 20th day after its final passage. (*Matter of Howe*, 112 N. Y. 100, affirming 48 Hun 235, overruling *Matter of Chardavoyne*, 5 Dem. 466.)

The successive Transfer and Collateral Inheritance Tax Laws are a continuation one of the other. (*Matter of Prime*, 136 N. Y. 347; *Matter of Embury*, 20 Misc. 75.)

The amendment of 1887 was not retroactive. (*Matter of Miller*, 110 N. Y. 216; *Matter of Brooks*, 6 Dem. 165; *Matter of Warrimer*, 6 Dem. 211; *Matter of Ryan*, 18 St. Rep. 992; *Matter of Cager*, 111 N. Y. 343; (*Matter of Kemey*, 56 Hun 117; *Matter of Wolfe*, 15 Supp. 539; *Matter of Hendricks*, 18 St. Rep. 939.)

The Act of 1885 was not repealed in 1887. Taxes accrued under the former were therefore collectible after the passage of the latter. (*Matter of Arnett*, 49 Hun 599.)

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The amendment of 1890 was not retroactive. (*Matter of Van Kleeck*, 121 N. Y. 701.)

The Act of 1891 did not operate to prevent a subsequent assessment and collection of a tax on the estate of a decedent who died intermediate the Act of 1887 and the Act of 1891. (*Matter of Prime*, 136 N. Y. 347.)

The taxes imposed by the Collateral Inheritance Act are special and not general, and the rule is that special tax laws are to be construed strictly against the government and favorable to the taxpayers, that a citizen cannot be subjected to special burdens without clear warrant of law. (*Matter of McPherson*, 104 N. Y. 306; *Matter of Enston*, 113 N. Y. 174; *Matter of Vassar*, 127 N. Y. 1.)

Estates vested before the passage of the Transfer Tax Act are not subject to the tax. (*Matter of Travis*, 19 Misc. 393.)

The Act does not apply to legacies not payable until after its passage where the testator died before. (*Matter of Coggswell*, 4 Dem. 248.)

Property taxable under the Inheritance Tax Laws of other states is none the less taxable under the laws of this state. (*Matter of Burr*, 16 Misc. 89.)

The statute does not mean that taxable estates are exempt from taxation to the extent of $500, but that only such estates as exceed $500 are taxable. (*Matter of Sherwell*, 125 N. Y. 376.)

The words "such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act" are not intended to be retroactive in effect. They apply to a case where a trans-

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fer was executed before the passage of the Act and a person or corporation should *thereafter* become beneficially entitled to the property. (*Matter of Forsyth*, 10 Misc. 477.)

The words "such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act" apply solely to gifts *causa mortis* and not to transfers by will or intestacy. Where, therefore, a will creating a remainder was proven before the passage of any Collateral Inheritance Tax Law, such remainder, although not actually vesting in possession until after the passage of such act, was transferred at the time of the testator's death and is not taxable. (*Matter of Seaman*, 147 N. Y. 69, reversing 87 Hun 619, which was based upon the opinion in *Tallmadge* v. *Seaman*, 85 Hun 242; *Tallmadge* v. *Seaman*, 9 Misc. 303, practically affirmed.)

Where, by the terms of a will, a life tenant has power to dispose of his estate during life or by will, and in case of his failure so to do the estate is to pass to certain remaindermen, and the life tenant by will directs that the property be distributed "according to the provisions of the will" of the first testator, the property is deemed to have been transferred to the remaindermen under the first will and not under the second; and such transfer is not taxable where the first testator died before the passage of the law taxing transfers by will. (*Matter of Langdon*, 153 N. Y. 6, affirming 11 App. Div. 220.)

Securities conveyed to a trustee by a conveyance irrevocable except by consent of grantor and trustee, and to be transferred to certain named persons upon the death

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of the grantor, are transferred immediately upon the execution of the deed and are not taxable upon the death of the grantor. The transfer is in the nature of a gift *inter vivos*. (*Matter of Green*, 7 App. Div. 339.)*

When property is conveyed to a trust company to hold and manage during the life of the grantor, to pay the income thereof to him and to transfer the same after his death to the persons named in his will or to his next of kin, a naked revocable trust is created and the property is to be taxed as passing by the will. (*Matter of Oysbury*, 7 App. Div. 71.)

Where property was deeded in 1882 to trustees in trust to pay income to decedent for life and on her death to convert it into money and distribute it to nephews and nieces, and where the death of decedent occurred after the act of 1885 went into effect, it was held that the legacies to the nephews and nieces were exempt. (*Matter of Hendricks*, 18 St. Rep. 989.)

The party who takes under the execution of a power of appointment in a will takes under the will, and the property so received is taxable under the Collateral Inheritance Tax Act. (*Matter of Stewart*, 131 N. Y. 274, reversing 61 Hun 554, affirming 10 Supp. 15.)

Where the personal estate of the deceased consisted exclusively of a distributive share in the estate of a deceased sister who resided at the time of her death without the estate and no part of said estate had come into the possession of the testatrix prior to her death, such portion of her estate was not liable to taxation. (*Matter of Thomas*, 3 Misc. 388.)

The payment of mortgages on real property from the personal estate where both the real and personal property are in the same hands does not reduce the personal prop-

*This decision was reversed in 153 N Y., 223, reported since going to press.

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erty for the purpose of taxation under this act. (*Matter of Livingston*, 1 App. Div. 568; *Matter of Sutton*, 3 App. Div. 308.)

Although a clear equitable conversion is established by the testator's will, the tax cannot be assessed upon the succession to the equity of redemption in the real estate. (*Matter of Sutton*, 15 Misc. 659; but see *Matter of Wheeler*, 51 St. Rep. 513.)

Personal property of a resident decedent is taxable wherever situated. (*Matter of Swift*, 137 N. Y. 77.)

Real property without the state devised by the will of a resident is not taxable. (*Matter of Lorrilard*, 6 Dem. 268, decided in 1887; *Matter of Swift*, 137 N. Y. 77.)

A foreign estate is liable to the legacy tax. (*Matter of Craig*, 15 Supp. 548, decided in 1891.)

A legacy of $500 is of a fair market value on its face and subject to taxation. (*Matter of Bird*, 32 St. Rep. 899; *Matter of Kavanagh*, 6 Supp. 669.)

A bequest of $500 not being payable until the end of a year from the granting of letters while the appraisal is made of the value at the time of the death is not at that time worth $500 and so is not taxable. (*Matter of Peck*, 9 Supp. 465.)

Where an equity in devised lands subject to a mortgage is less than $500 it is exempt from taxation. (*Matter of Kene*, 8 Misc. 102.)

Life insurance policies held by the testator at the time of his death, and payable to himself, his executors, administrators, assigns and legal representatives, are property within the meaning of the Transfer Tax Act and can be valued and assessed for taxation. (*Matter of Knoedler*, 140 N. Y. 377; 68 Hun 150.)

Funds on deposit to the credit of a partition suit to

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which the deceased was a party are not to be considered real property for the purposes of exemption under this act. (*Matter of Stiger*, 7 Misc. 268.)

A bequest for the maintenance of a burial plot is exempt as funeral expenses. (*Matter of Vinot*, 26 St. Rep. 610.)

A bequest in trust for masses, if not contained in funeral expense clause, is taxable. (*Matter of Black*, 3 Supp. 452.)

A bequest in satisfaction of a debt is not a legacy within this act. (*Matter of Rogers*, 30 St. Rep. 943.)

In order to avoid taxation upon the ground that a legacy is in payment for services a valid claim therefor must be proven. (*Matter of Doty*, 7 Misc. 193.)

A legacy "in consideration of a home for me at my house during my life" is in payment of a debt and not taxable. (*Matter of Hulse*, 39 St. Rep. 402.)

The tax is upon the right of succession to and not upon the property itself. (*Matter of Swift*, 137 N. Y. 77.)

The tax is not on property but on the transmission of it; it therefore attaches although the property is not taxable.

For example United States Bonds.

(*Matter of Howard*, 10 St. Rep. 185; *Matter of Keith*, 5 Supp. 201; *Matter of Tuigg*, 15 Supp. 548; *Matter of Hendricks*, 18 St. Rep. 989; *Matter of Carver*, 75 Hun 612, affirming 4 Misc. 592.)

Contra. The later decisions, however, are to the effect that United States bonds are *not* taxable. Section 22 of the Act of 1892 (now section 242 of the Tax Law) provides that "property" shall mean "property . . . over which this state has any jurisdiction for the purposes of taxation," and Federal securities are plainly not within the taxing power of the state. Without this express exemption, or

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limitation, however, in the Transfer Tax Act, United States bonds and securities would be taxable under the theory that it is the transfer of property that is taxed and not the property itself. (*Matter of Whiting*, 150 N. Y. 27, reversing 2 App. Div. 590; *Matter of Sherman*, 153 N. Y. 1, affirming 15 App. Div. 628.)

Legacies to the United States are taxable under this Act, the United States being a foreign corporation as far as the State of New York is concerned. The tax is not imposed upon the property of the United States but upon its right of succession thereto. (*Matter of Merriam*, 141 N. Y. 479, affirming 73 Hun 587; *Matter of Cullom*, 145 N. Y. 503, affirming 76 Hun 610 and 5 Misc. 173.)

Stocks of foreign corporations owned by a resident of the state are taxable on his death under this act, the theory being that the tax is imposed on the right of succession and not on the property. (*Matter of Merriam*, 141 N. Y. 479; overruling in effect *Matter of Thomas*, 3 Misc. 388, decided in 1893.)

The value of the estate is its value at the time of the decedent's death.

The true test of value by which the tax is to be measured is the value of the estate at the time of the transfer of title and not its value at the time of the transfer of the possession. (*Matter of Davis*, 149 N. Y. 539.)

The better and more reasonable construction of the statute is that the property of which the person died seized or possessed is subject to the tax; that the increase or interest thereafter obtained is not taxable. (*Matter of Vassar*, 127 N. Y. 1.)

The better rule is to assess the tax on the property

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transferred as the testator leaves it, without regard to the operation or effect of equitable rules that apply only to the administration of the estate. (*Matter of Sutton*, 3 App. Div. 208.)

It is not the legacy that is taxable, but the property of which the testator dies seized or possessed applicable to the payment of the legacy. (*Matter of Weed*, 10 Misc. 628.)

The basis of taxation is the value of the whole estate transferred and not the value of individual shares.

Since the passage of the Act of 1892, the law of taxable transfers must be so construed that the liability to taxation shall depend upon the aggregate value of all the property transferred to taxable persons and not on the separate value of each several transfer. This rule does not overthrow the general theory of the nature of the tax already determined, that the tax is imposed upon the transfer of property to individual legatees; but it applies to provisions of the act where, by the use of the definitions, the intent of the legislature to so enact may be seen. (*Matter of Hoffman*, 143 N. Y. 327, reversing, on this point, 76 Hun 399, and affirming, on this point, 5 Misc. 439.)

The manifest purpose of the Act of 1892 was to tax the aggregate of the property transferred by the deceased and not the specific shares passing to each beneficiary; each share, therefore, less than $500 passing to a collateral relative is taxable if the whole amount passing to collateral relatives exceeds $500. (*Matter of Hall*, 88 Hun 68.)

In every instance where the total property, real or

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personal, of an intestate or testator passing to persons other than those named in section 2 of the Act of 1892 (now section 221 of the Tax Law) is of the value of $500 or more, the liability to taxation at the rate of 5 per centum exists; the liability not being affected by the size of the individual shares. (*Matter of Taylor*, 6 Misc. 277.)

In every instance where the total personal property of an intestate or testator passing to the persons named in section 2 of the Act of 1892 (now section 221 of the Tax Law) equals or exceeds $10,000 the liability to taxation under the provisions of said act at the rate of 1 per centum exists, the liability not being affected by the size of the individual shares. (*Matter of Taylor*, 6 Misc. 277.)

Where the total amount of the shares of nieces and nephews under a will is less than $500 they are not liable to any tax. (*Matter of Weed*, 10 Misc. 628.)

Where the distributive share passing to a sister is less than $10,000 it is not to be added to the distributive shares passing to nephews, in ascertaining whether such last named distributive shares are subject to taxation. (*Matter of Bliss*, 6 App. Div. 192.)

Previous to the Act of 1892, at least, the word "estate" meant the property passing to the individual beneficiary and not the whole estate of the decedent. (*Matter of Sterling*, 9 Misc. 224.)

To the same effect, the opinion of the Attorney-General, given Feb. 4, 1896.

It was uniformly held before the passage of the Act of 1892 that the tax was upon the individual and could be imposed only when the particular interest devised exceeded the limitation provided by the statute. (*Matter of Jones*, 10 St. Rep. 163; *Matter of Smith*, 5 Dem. 90; *Matter of Hopkins*, 6 Dem. 1; *Matter of McCready*,

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10 St. Rep. 696; *Mc Vean* v. *Sheldon*, 48 Hun 163; *Matter of Cager*, 111 N. Y. 343; *Matter of Howe*, 112 N. Y. 100; *Opinion of Attorney-General*, June 11, 1891.)

In *Matter of Skillman*, 10 Misc. 642, decided in 1894, the surrogate construed the Act of 1892 differently than the Court of Appeals in *Matter of Hoffman*, *supra*, and arrived at the conclusion that the purpose of section 22 of that Act (now section 242 of the Tax Law) in defining the words " property " and " estate " was the imposition of a tax upon the value of the legacy in the hands of the testator or intestate and not its value to the legatee or distributee shorn of interest until payable, and, therefore, legacies bequeathed to lineal descendants in sums less than $10,000 each, although in the aggregate they might exceed $10,000, were exempt from taxation.

Contingent and expectant estates.

The statute does not contemplate those cases only where the interests created are capable of valuation at the death of the testator. Contingent interests may be taxed when they vest in possession and their value can be ascertained. (*Matter of Stewart*, 131 N. Y. 274, reversing 61 Hun 554, affirming 10 Supp. 15.)

A vested remainder limited on a life estate is taxable. (*Matter of Vinot*, 7 Supp. 517.)

When the question as to whether any property at all shall pass as a remainder and, if so, how much, depends upon the will of the first taker, there is no basis upon which the value of the devise can be appraised and no foundation for the imposition of any tax. (*Matter of Cager*, 111 N. Y. 343, affirming 46 Hun 657.)

Contingent and expectant estates can be taxed only

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when they vest and become fixed and actual. (*Matter of Hoffman*, 143 N. Y. 327, affirming, on this point, 76 Hun 399, and reversing, on this point, 5 Misc. 439; *Matter of Westcott*, 11 Misc. 589; *Matter of Roosevelt*, 143 N. Y. 120, affirming 76 Hun 257; *Matter of Le Fever*, 5 Dem. 184; *Matter of Leavitt*, 4 Supp. 179; *Matter of Clark*, 5 Supp. 199.)

Where the remainder of an estate cannot be fixed because of the power given to the life-tenant to use the principal, a tax on the remainder cannot be assessed until the death of the life tenant. (*Matter of Hopkins*, 6 Dem. 1.)

When property is devised in trust for persons exempt from taxation under the Transfer Tax Act, and it cannot be determined until the end of the trusts whether the remainders will pass actually and beneficially to persons in whose hands it will be taxable or to others in whose possession it will be exempt, no appraisement of the contingent remainders should be made until such interests be come vested in possession on the termination of the trusts. (*Matter of Curtis*, 142 N. Y 219; 73 Hun 185.)

Where an estate transferred has a fixed or ascertainable value at the time of the death of the grantor, testator or intestate, the value at that time must be the basis of the appraisal whenever made; but if the person to whom the property passes cannot be known until the death of the life tenant the tax cannot be imposed until after that event. (*Matter of Davis*, 149 N. Y. 539.)

Where a widow is given the use of the whole estate for life but in case of her re-marriage then the use of one-half only, it is impossible to ascertain the value of her estate for the purpose of taxation before her death or re-marriage. (*Matter of Millward*, 6 Misc. 425.)

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Property of nonresident decedents.

The collateral inheritance tax was intended to cover only the tangible property kept within this state by a nonresident decedent. Debts and legacies due the decedent and which have never been reduced to possession are not taxable. (*Matter of Phipps*, 143 N. Y. 641, affirming 77 Hun 325.)

Before the Act of 1887 property within this state passing by will or the laws of intestacy from a nonresident decedent was not taxable. (*Matter of Enston*, 113 N. Y. 174; *Matter of Tulane*, 51 Hun 213; *Matter of Hall*, 29 St. Rep. 367.)

The property of a nonresident who died prior to 1887, consisting of stock in a New York corporation, was held taxable. (*Matter of Leavitt*, 4 Supp. 179. This decision was based upon *Matter of Enston*, 46 Hun 506, which case was overruled in 113 N. Y. 175.)

Real or personal property within this state of a nonresident decedent is taxable under the amendment of 1887. (*Matter of Romaine*, 127 N. Y. 80, affirming 58 Hun 109; *Matter of Vinot*, 28 St. Rep. 610.)

Under the Act of 1887 a bank account and bond and mortgage of a nonresident decedent in this state are taxable. (*Matter of Clark*, 9 Supp. 444.)

Bonds of *foreign* corporations, both registered and coupon, physically present within the state and owned by a nonresident decedent, are subject to taxation under this act. (*Matter of Whiting*, 150 N. Y. 27; *Matter of Morgan*, 150 N. Y. 35.)

Shares of *stock* of *foreign* corporations, although within the state at the time of a nonresident testator's death, are not taxable. (*Matter of James*, 144 N. Y. 6, affirming

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77 Hun 211, reversing 6 Misc. 206; *Matter of Whiting*, 150 N. Y. 27.)

Bonds of *domestic* corporations, physically present within the state and owned by a nonresident decedent, are subject to taxation under this act. (*Matter of Whiting*, 150 N. Y. 27; 2 App. Div. 590.)

Shares of *stock* of *domestic* corporations, physically present within the state and owned by a nonresident decedent, are subject to taxation under this act. (*Matter of Whiting*, 150 N. Y. 27.)

Shares of *stock* of domestic corporations physically *absent* from the state and held by a nonresident dying without the state and which then pass to nonresidents, are subject to taxation under this act. (*Matter of Bronson*, 150 N. Y. 1, reversing 1 App. Div. 546.)

Bonds of domestic corporations physically *absent* from the state and held by a nonresident dying without the state and which then pass to nonresidents are not subject to taxation under this act. (*Matter of Bronson*, 150 N. Y. 1; 1 App. Div. 546.)

A bond held by a nonresident, secured by a mortgage upon real property in this state, is taxable. (*Matter of Burr*, 16 Misc. 89.)

Deposits in savings banks of this state, made by nonresidents, are taxable here. (*Matter of Burr*, 16 Misc. 89.)

Money in the hands of the resident legal adviser of a nonresident decedent is taxable. (*Matter of Burr*, 16 Misc. 89.)

A deposit of money belonging to a trust estate in a bank or trust corporation by a nonresident decedent as trustee, although a debt, still is property in this state for all practical purposes and is taxable within the meaning

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of the Transfer Tax Act. (*Matter of Houdayer*, 150 N. Y. 37, reversing 3 App. Div. 474.)

Where a nonresident decedent's estate lies partly in this state and partly elsewhere, it is within the powers of the executors to pay specific legacies from the property without the state and avoid the tax, the remainder passing to persons in whose hands it is exempt. (*Matter of James*, 144 N. Y. 6; affirming 77 Hun 211, reversing 6 Misc. 206.)

Exemption of certain persons and corporations.

Chapter 191 of the laws of 1889 exempted from the provisions of the Collateral Inheritance Tax Act religious, educational, etc., corporations; that Act, as amended by chapter 553 of the Laws of 1890, was repealed by the Tax Law; but under section 4 of the Tax Law such corporations are exempted from taxation generally, and section 220 exempts from the imposition of the transfer tax all corporations exempt by law from taxation on real or personal property. Religious and educational corporations are, therefore, under existing statutes, exempted from transfer taxes, and religious corporations are particularly exempted by section 221 of this Act.

The personal property of religious societies and of colleges is not exempted by law from taxation within the Collateral Inheritance Act of 1887. (*Catlin* v. *Trustees of Trinity College*, 113 N. Y. 133.)

The Act of 1887 meant to exempt from this tax those societies, corporations and institutions whose property was expressly exempted from taxation by statute; for example, alms houses, poor houses, etc. (*Church* v. *People*, 6 Dem. 154; *Matter of Hunter*, 22 Abb. N. C. 24.)

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The Act of 1890 exempting from taxation the personal estates of certain corporations was not retroactive. (*Matter of Van Kleeck*, 121 N. Y. 701, reversing 55 Hun 472.)

A bequest to a municipal corporation, made in 1890, is not exempt under Laws 1887, chapter 713. (*Matter of Hamilton*, 148 N. Y. 310.) Such a bequest made after the passage of the Act of 1892 would, doubtless, under the decision in *Matter of Sherman*, 153 N. Y. 1, be exempt.

It is not necessary that a corporation be specifically exempted by its charter. It may belong to a class generally exempted. (*Matter of Miller*, 5 Dem. 132.)

It is not necessary that complete immunity from taxation exist as to the property of a corporation in order that a bequest to it should be exempted from the Collateral Inheritance Tax. (*Matter of Vassar*, 127 N. Y. 1, reversing 58 Hun 378.)

The law exempting certain corporations does not refer to foreign corporations, and a legacy to a college outside of this state is not exempt, though by its charter exempted from taxation in its own state. (*Matter of McCoskey*, 22 Abb. N. C. 20.)

The words "now exempted by law" refer to exemptions under our laws, and exemptions of a foreign corporation from taxation under the laws of jurisdiction of origin does not withdraw it from the operation of the Inheritance Tax Law. (*Catlin* v. *Trustees of Trinity College*, 113 N. Y. 133; 49 Hun 278.)

The Acts exempting from legacy taxes charitable and religious corporations did not apply to foreign corporations. (*Matter of Prime*, 136 N. Y. 347.)

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The statute exempting real estate of a religious corporation excludes the personal estate from exemption. (*Matter of Forrester*, 35 St. Rep. 776.)

A bequest of money to a church with which to build a church edifice is to be considered as personal and not as real property for the purposes of taxation; where, therefore, prior to 1890, buildings used for public worship were exempt from taxation but there was no general exemption of religious corporations from taxation, a bequest of money with which to build a church was taxable under this act. (*Matter of Van Kleeck*, 121 N. Y. 701, reversing 55 Hun 472.)

A home for consumptives whose inmates are wholly supported by charity is exempt. (*Matter of Herr*, 55 Hun 167.)

A charitable institution maintaining a hospital supported wholly by voluntary contributions is exempt as an alms house. (*Matter of Curtis*, 7 Supp. 207.)

A corporation supported entirely by charity and whose inmates are afflicted with incurable diseases and without homes, money or friends able to support them, is exempt. (*Matter of Neale*, 10 Supp. 713.)

A society that conducts a house of industry is exempt, although not specially exempted by its charter. (*Matter of Herr*, 55 Hun 167.)

An institution for the blind, whose patients contribute nothing towards its support, is exempt. (*Matter of Underhill*, 2 Connoly 262.)

The "New York Hospital" was made exempt, by a special statute, from taxation if no income was derived from its property; the facts that sales were made occasionally of certain insignificant articles of produce of a farm and that charges were made to patients able to pay

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did not make it liable to taxation. (*People* v. *Purdy*, 58 Hun 386, affirmed in 126 N. Y. 679.)

The "New York Association for Improving the Condition of the Poor" is exempt. (*Matter of Lenox*, 9 Supp. 895.)

The "Lenox Library" of New York city is exempt, being by charter especially exempted from taxation. (*Matter of Lenox*, 9 Supp. 895.)

The "Brooklyn Home for Consumptives" is exempt as an alms house. (*Matter of Herr*, 55 Hun 167.)

The "Hebrew Orphan Asylum" of New York city is a house of industry and exempt from taxation. (*Hebrew Orphan Asylum* v. *Mayor*, 11 Hun 116.)

The "Association for the Benefit of Colored Orphans" in New York city is an alms house and exempt from taxation. (*Association* v. *Mayor*, 104 N. Y. 581.)

The "Swiss Benevolent Society" of New York city is an alms house and exempt from taxation. (*People* v. *Commissioners*, 36 Hun 311.)

The following corporations are held to be exempt from taxation under the provisions of the Act of 1887:

Vassar Bros.' Home for Aged Men.

John Guy Vassar Orphan Asylum.

Vassar Bros.' Hospital.

Vassar College.

(*Matter of Vassar*, 127 N. Y. 1.)

A charitable institution which requires an admission fee, such as an alms house, is *not* exempt. (*Matter of Kech*, 7 Supp. 331; but see *Matter of Vassar*, 127 N. Y. 1.)

A charitable institution which derives income from membership, admission fees and otherwise, is *not* exempt. (*Matter of Vanderbilt*, 10 Supp. 239; but see *Matter of Vassar*, 127 N. Y. 1.)

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A home for aged women which charges board for its inmates is *not* exempt. (*Matter of Lenox*, 9 Supp. 895; but see *Matter of Vassar*, 127 N. Y. 1.)

The Presbyterian Boards of Home and Foreign Missions are *not* exempt. (*Matter of Board of Foreign Missions*, 58 Hun 116.)

The "American Board of Commissioners for Foreign Missions" is *not* exempt from taxation under this Act, being a foreign corporation possessing a statutory privilege in this state. (*Matter of Prime*, 136 N. Y. 347.)

A legacy to Trinity College is *not* exempt from taxation under the laws of this state, although by its charter the college is exempted from taxation under the laws of Connecticut. (*Catlin* v. *Trustees of Trinity College*, 113 N. Y. 133; 49 Hun 278.)

The "Christian Home for Temperate Men," although exempted from local taxation for other purposes, is not exempted from state taxation and is *not* exempt, therefore, from the transfer tax. (*Matter of Vanderbilt*, 10 Supp. 239.)

The "Bank Clerks' Mutual Benefit Association" is *not* exempt. (*Matter of Jones*, 22 Abb. N. C. 50, decided in 1888.)

The "Society for the Prevention of Cruelty to Animals" is *not* exempt. (*Matter of Keith*, 5 Supp. 201.)

§ 221. **Exceptions and limitations.**—When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity

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with the laws of this state, of the decedent, grantor, donor or vendor or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempted from and not subject to the provisions of this act.

Revised and re-enacted from Laws 1892, ch. 399, § 2.

"Lineal descendants" means the direct descendants of the testator or intestate and not nephews or nieces. (*Matter of Miller*, 45 Hun 244; *Matter of Smith*, 45 Hun 90.)

The children of adopted children or of persons to whom the testator stood for ten years prior to death in the mutually acknowledged relation of a parent are not lineal descendants within the statute and are not entitled to an exemption from taxation under this Act. (*Matter of Moore*, 90 Hun 162.)

A legacy to the husband of a daughter is exempt, though she died before the testator. (*Matter of Woolsey*, 19 Abb. N. C. 232; *Matter of McGarvey*, 6 Dem. 145);

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and this is so even if the husband remarried prior to the transfer. (*Matter of Ray*, 13 Misc. 480.)

A valid parol trust to the executor for the use of testator's brother may be proven and the property exempted. (*Matter of Farley*, 15 St. Rep. 727.)

Funds on deposit to the credit of a partition suit to which the deceased was a party are not to be considered real property for the purposes of exemption under this Act. (*Matter of Stiger*, 7 Misc. 268.)

See notes under § 220 as to the tax being upon the *whole* estate and not upon individual shares.

Religious corporations.

Property transferred to a bishop or to a religious corporation before the passage of the act exempting such property from a transfer tax, is released by the terms of the act from further liability for the payment of the tax. (*Church of the Transfiguration* v. *Niles*, 86 Hun 221.)

In connection with the will a valid parol trust may be proven in favor of religious corporations and the estate be thus exempted from taxation. (*Matter of Murphy*, 4 Misc. 230.)

Bequests to foreign religious corporations are not exempt from taxation under the statute. (*Matter of Balleis*, 144 N. Y. 132; 78 Hun 275; *Matter of Smith*, 77 Hun 134; *Matter of Taylor*, 80 Hun 589.)

See notes under § 220 as to exempt corporations.

Adopted children.

The Act of 1885 did not exempt adopted children. (*Matter of Miller*, 110 N. Y. 216.)

The Act of 1887 exempting legacies to adopted children

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repealed the former act in that particular. (*Matter of Surrogate of Cayuga Co.*, 46 Hun 657.)

Where the death of a decedent occurred before the passage of the Act of 1887, but the tax upon property passing to an adopted child had not been paid when that Act took effect, the adopted child was not exempt. (*Matter of Miller*, 110 N. Y. 216; *Matter of Cager*, 111 N. Y. 343; *Matter of Ryan*, 18 St. Rep. 992; *Warner* v. *People*, 6 Dem. 211.)

The Act of 1889, making applicable the provisions of the Act of 1887, as far as adopted children were concerned, to estates of deceased persons where no assessment of the tax had been made at the time of its passage, did not make exempt property passing to adopted children where the testator died in 1885 and the tax was assessed before the passage of the Act of 1889. (*Matter of Kemey*, 56 Hun 107.)

Legal adoption under the laws of another state entitles to exemption. No evidence of adoption is required by the statute but mutual acknowledgment, and this is proven by all the facts and circumstances of the case. (*Matter of Butler*, 58 Hun 400, affirmed without opinion in 136 N. Y. 649.)

The children of adopted children are not entitled to an exemption from taxation under this act. (*Matter of Moore*, 90 Hun 162; *Matter of Bird*, 32 St. Rep. 899.)

The "mutually acknowledged relation of a parent."

The relation of one who stands in the place of a parent may arise by virtue of an agreement between adults, or from circumstances surrounding the commencement and continuance of such relations, and it was the intent of the

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law to give this class of cases the benefit of its exempting clause. (*Matter of Spencer*, 21 St. Rep. 145.)

The language of the statute, viz., "mutually acknowledged relation of a parent," was not intended to restrict the exemption from taxation to illegitimate children alone, but was intended to cover cases of children adopted in fact and where such relation had existed for ten years prior to the transfer. (*Matter of Nichols*, 91 Hun 134.)

Where testatrix died in 1887, but no proceedings to assess a transfer tax were commenced until after the Acts of 1887, 1889 and 1892, legatees to whom the testatrix had sustained the mutually acknowledged relation of a parent for more than ten years prior to her death were exempt from a transfer tax. (*Matter of Thomas*, 3 Misc. 388.)

A step-parent does not necessarily stand in the relation of a parent, within the meaning of this act. (*Matter of Capron*, 30 St. Rep. 948.)

The children of persons to whom the testator stood for ten years prior to death in the mutually acknowledged relation of a parent are not entitled to an exemption from taxation under this act. (*Matter of Moore*, 90 Hun 162.)

The residence of a testator with his nieces, he merely contributing to the household expenses, and there being no evidence that he ever called them or spoke of them as his daughters or that they ever called him by other name than uncle, will not establish the existence of a mutually acknowledged relation of parent and child within the statute. (*Matter of Moulton*, 11 Misc. 694.)

What circumstances will establish the existence of the relation. (*Matter of Spencer*, 21 St. Rep. 145; *Matter of Capron*, 30 St. Rep. 948; *Matter of Sweetland*, 47 St. Rep. 287; *Matter of Wheeler*, 1 Misc. 450.)

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§ 222. **Lien of tax and payment thereof.**—Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer or the comptroller of the county of the surrogate having jurisdiction as herein provided; and said treasurer or comptroller shall give, and every executor, administrator or trustee, shall take duplicate receipts from him of such payment, one of which he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof and to seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned by the state comptroller or a copy thereof certified by him, or unless a bond shall have been filed as prescribed by section two hundred and twenty-six of this chapter. All taxes imposed by this article shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property or interest therein

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limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Revised and re-enacted from Laws 1892, ch. 399, § 3. Amended by Laws 1897, ch. 284, § 3.

The executor is personally liable for the payment of the tax and must account therefor on final settlement.

Where the appraiser is duly appointed and notice of appraisal given and the report confirmed after due notice to the City Comptroller the state cannot hold the executor personally for the taxes on legacies improperly found exempt by the appraiser. (*Matter of Vanderbilt*, 10 Supp. 239.)

The surrogate cannot, on motion of the executor, decide as to his liability to pay the tax. (*Matter of Farley*, 15 St. Rep. 727.)

The fact that the whole estate has been paid out prior to the assessing of the tax is no legal excuse for the non-payment of the tax. (*Matter of Hacket*, 14 Misc. 282.)

§ 223. **Discount, interest and penalty.**—If such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof,

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interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reasons of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section two hundred and twenty-six of this chapter, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of payment thereof.

Revised and re-enacted from Laws 1892, ch. 399, § 4.

The interest to be charged for delayed payment of the tax is governed by the statute in force at the time of the death of the decedent where the repealing act saved all rights accrued or accruing at the time of its passage. (*Matter of Fayerweather*, 143 N. Y. 114.)

Persons subject to the tax are entitled to any immunity or privilege in respect to the time of payment which is provided by the law as it stands when the right to the tax accrues.

So where the rate of interest upon unpaid taxes was changed by the Law of 1892, interest upon taxes accruing before the passage of that act must be charged according to the old law. (*Matter of Milne*, 76 Hun 328; *Matter of Moore*, 90 Hun 162.)

Interest upon the tax should be charged from the time

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it is imposed and accrues only. (*Matter of Davis*, 149 N. Y. 539.)

In case the estate cannot be settled at the end of the year neither the 6 per cent. interest for the 6 months nor the 10 per cent. interest shall be added, but only 6 per cent. after one year until the obstruction is removed. (*People* v. *Prout*, 53 Hun 541, affirmed in 117 N. Y. 650, decided in 1889.)

A person will not be relieved from payment of the penalty imposed for nonpayment of a transfer tax within the time required by the statute on the ground of ignorance of the law or of hardship to the applicant. (*Matter of Platt*, 8 Misc. 144.)

A testatrix died August 17, 1889; but, owing to a contest, probity of the will was not obtained and letters testamentary issued until April 8, 1891; it was held that interest on the tax should be added from 18 months after death, at 6 per cent., until the time of payment of the tax. (*Matter of Ray*, Opinion of Surrogate of Rensselaer Co., Sept. 23, 1891.)

See *Matter of Moore*, 90 Hun 162, for a case of delay in determination and payment of tax due to litigation.

The burden rests upon the party claiming exemption to show that the settlement of the estate has been delayed by necessary litigation or other unavoidable cause. (*Matter of Prout*, 53 Hun 541.)

§ 224. **Collection of tax by executors, administrators and trustees.**—Every executor, administrator or trustee, shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might

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be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasury * or comptroller, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the

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case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Revised and re-enacted from Laws 1892, ch. 399, § 5.

§ 225. **Refund of tax erroneously paid.**—If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the state comptroller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, or comptroller of the city of New York, or if such tax has been paid to such treasurer or comptroller of the city of New York, he shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in his quarterly account rendered to the comptroller of the state under this act. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed, on due notice to the comptroller of the state, the state comptroller shall, by order, direct and allow the treasurer of the county, or the comp-

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troller of the city of New York, to refund to the executor, administrator, trustee, person or persons, by whom such tax had been paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody, to the credit of such taxes, and to credit himself with the same in his quarterly account rendered to the comptroller of the state under this act; but no application for such refund shall be made after one year from such reversal or modification, and the comptroller of the state, shall deduct from the fees allowed by this article to the comptroller of the city of New York or the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate who has assessed the tax upon the transfer of property under this article that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

Revised and re-enacted from Laws 1892, ch. 399, § 6. Amended by Laws 1897, ch. 284, § 4.

Where the transfer tax has been paid to the County Treasurer or the Comptroller of the City of New York, the surrogate of the proper county may order it to be refunded; but when the tax shall have been actually paid

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into the state treasury, then the state comptroller has authority to order a refunding. (*Matter of Park*, 8 Misc. 550.)

An application made to the surrogate is not the proper proceeding to compel the refunding of a tax by the city comptroller. (*Matter of Howard*, 54 Hun 305.)

The restitution of a tax improperly paid must be sought as prescribed by this act and not be appealed under the Code. (*Matter of Hall*, 7 Supp. 595.)

§ 226. **Deferred payment.**—Any person or corporation beneficially interested in any property chargeable with a tax under this article, and executors, administrators and trustees thereof may elect within eighteen months from the date of the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in penalty of three times the amount of any such tax, with such sureties as the surrogate of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate. Such bond must be executed and filed and a full return of such property upon oath made to the surrogate within one year from the date of transfer thereof as herein

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provided, and such bond must be renewed every five years.

Revised and re-enacted from Laws 1892, ch. 399, § 7. Amended by Laws 1897, ch. 284, § 5.

Where by the provisions of a will, the executors were to continue the business and not dispose of the interest of the testator in a partnership until they could do so to advantage, the tax should not be assessed and collected until the beneficiaries took possession. (*Matter of Wheeler*, 51 St. Rep. 513.)

§ 227. **Taxes upon devises and bequests in lieu of commissions.**—If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised, above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

Revised and re-enacted from Laws 1892, ch. 399, § 8.

§ 228. **Liability of certain corporations to tax.**—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the comp-

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troller of the city of New York on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent unless notice of the time and place of such intended transfer be served upon the county treasurer or comptroller at least five days prior to the said transfer. And it shall be lawful for the said county treasurer or comptroller, personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render said safe deposit company, trust company, bank or other institution, person or persons liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this article.

Revised and re-enacted from Laws 1892, ch. 399, § 9.

§ 229. **Jurisdiction of the surrogate.**—The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a sur-

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rogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the county treasurer or comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to such county treasurer or comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the county treasurer or comptroller were a creditor of the decedent.

Revised and re-enacted from Laws 1892, ch. 399, § 10.

The surrogate has sole jurisdiction to determine whether estates are subject to the transfer tax.

The Supreme Court, in its capacity as a court of equity, has no jurisdiction to determine even for the purpose of

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construing a will whether the estate, or any part of it, is liable to the transfer tax.

A demurrer will lie to a complaint asking the Supreme Court to construe a will and determine a transfer tax upon a trust estate. (*Weston* v. *Goodrich*, 86 Hun 194.)

The proper county in which to assess the tax is that of the surrogate first obtaining jurisdiction. (*Matter of Keenan*, 5 Supp. 200.)

The jurisdiction of a surrogate's court over proceedings to appraise and collect a transfer tax instituted after the passage of the Transfer Tax Law is governed by such law, although the nonresident decedent died in 1887 and owned no real property in this state. (*Matter of Embury*, 20 Misc. 75.)

The method of procedure for the enforcement of the Transfer Tax Law is controlled by the statute as it existed at the time the proceeding was instituted. The rights of the parties may depend upon another statute. (*Matter of Davis*, 149 N. Y. 539.)

Under the provision of the law giving the surrogate jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, it is entirely within the jurisdiction of the surrogate to decide that a will is in whole or in part invalid, and that the property passes under the statutes of descent and is or is not liable to a transfer tax. (*Matter of Ullmann*, 137 N. Y. 403, reversing 67 Hun 5.)

The jurisdiction of a surrogate's court over proceedings to collect a tax is not dependent on the existence within the state of unadministered assets of a nonresident's estate at the time of the institution of the proceedings. (*Matter of Embury*, 20 Misc. 75.)

The surrogate has power to enforce the payment of a

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transfer tax by the same proceedings as are provided for the enforcement of the decrees of his court. An order for the payment of such tax may be enforced by proceedings for contempt against administrators and executors before the issuance and return of an execution on the surrogate's decree. (*Matter of Prout*, 3 Supp. 831; *Matter of Pelton*, 10 Supp. 642.) But an execution must first issue against other persons interested in the property. (*Matter of Prout*, 3 Supp. 831.)

§ 230. **Appointment of appraisers.**—The surrogate, upon the application of any interested party, including the state comptroller, county treasurers, or the comptroller of New York city, or upon his own motion, shall, as often as, and whenever occasion may require, appoint a competent person as appraiser, to fix the fair market value (at the time of the transfer thereof) of property of persons whose estates shall be subject to the payment of any tax imposed by this article. If the property upon the transfer of which a tax is imposed shall be an estate, income or interest, or shall be a remainder or reversion or other expectancy, real or personal, the title to which is fixed, absolute and indefeasible, such estate or estates shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the fair and clear market value thereof at that time; provided, however, that when such estate, income or interest shall be of such a nature that its fair and clear market value can not be ascertained at such time, it shall be appraised in

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like manner at the time when such value first becomes ascertainable. Estates in expectancy which are contingent or defeasible shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum. In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or dimi-

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nution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five of this article. Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived. When property is devised or bequeathed in trust for persons in succession who are all liable to taxation at the same rate, it shall be lawful for the trustees thereof to pay out of the principal of the trust fund or property the taxes to which the particular estates and the expectant estates limited thereon may be respectively liable; and when such remainders or expectant estates shall be of

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such a nature or so disposed and circumstanced that the taxes thereon shall not be presently payable under the provisions of this act, or when property is devised or bequeathed in trust for persons in succession who are not liable at the same rate; or where some of the persons taking in succession are exempt, it shall, nevertheless, be lawful for county treasurers and the comptroller of New York city, by and with the consent of the comptroller of the state, expressed in writing, to agree with such trustees and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said trustees upon payment of the taxes provided for in such compositions; provided, however, that no such composition shall be conclusive in favor of such trustees as against the interest of such cestuis que trustent as may possess either present rights of enjoyment or fixed, absolute and indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally when competent, or by guardian or committee. Such compositions when made shall be executed in triplicate and one copy shall be filed in the office of the comptroller of the state, one copy in the office of the surrogate and one copy be delivered to the trustees who shall be parties thereto.

Revised and re-enacted from Laws 1892, ch. 399, § 11. Amended by Laws 1897, ch. 284, § 6.

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An appraiser appointed by virtue of the taxable transfers law, who takes any fee or reward from an executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay such tax, or any portion thereof, is guilty of a misdemeanor. (Penal Code, § 48 c.; Laws 1893, ch. 692.)

The time when the surrogate shall proceed to appoint an appraiser, where the interests are ascertainable and certain, must be left to his sound judgment. He is not bound to await a final accounting. (*Matter of Westurn*, 152 N. Y. 93; s. c. 8 App. Div. 59.)

The surrogate should not proceed on his own motion until eighteen months after the death of the decedent. (*Matter of Astor*, 28 Abb. N. C. 405.)

Property should be appraised and tax assessed as soon after death as practicable. (*Matter of Vassar*, 127 N. Y. 1.)

The duty of applying for appraisement is primarily on the executor. (*Fraser* v. *People*, 6 Dem. 174.)

On an application for an appraiser the legatees need not be cited. (*Matter of Astor*, 20 Abb. N. C. 405.)

The comptroller of New York city should have notice of proceedings to appraise an estate for the imposition of a transfer tax. (*Matter of Wolfe*, 15 Supp. 539.)

See notes under § 220 as to contingent and expectant estates.

§ 231. **Proceedings by appraisers.**—Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the county treasurer or comptroller, and to such persons as the surrogate

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may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpœnas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as said surrogate may order or require. Every appraiser shall be paid on the certificate of the surrogate at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpœnaed to attend in courts of record, by the county treasurer or comptroller out of any funds he may have in his hands on account of any tax imposed under the provisions of this article.

Revised and re-enacted from Laws 1892, ch. 399, § 12.

If the property is in more than one county, one appraiser may appraise it all. (*Matter of Keenan*, 5 Supp. 200.)

Before the liability of the taxpayer becomes fixed he must have some kind of notice of the proceeding against him and a hearing or an opportunity to be heard in ref-

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erence to the value of his property and the amount of the tax which is thus to be imposed. Unless he has these his constitutional right to due process of law has been invaded. (*Matter of McPherson*, 104 N. Y. 231.)

The order appointing the appraiser should designate the persons on whom notices are to be served and these should be all who are interested in the whole estate and by law entitled to notice of proceedings affecting the same. The surrogate is to fix the length of notice. (*Matter of Astor*, 20 Abb. N. C. 405; *Matter of Vanderbilt*, 10 Supp. 239.)

The appraiser should report not only service of notices on all persons named by the surrogate but also that they are all (or not all) the persons known to him (the appraiser) to have or claim an interest in such property. (*Matter of Astor*, 17 St. Rep. 787.)

Before the Act of 1892 an appraiser could not administer oaths and take testimony. (*Matter of Astor*, 20 Abb. N. C. 405.)

In a proceeding to assess the value of a decedent's estate for the purpose of taxation under the provisions of the Transfer Tax Act there is no necessity for the appointment of a special guardian of an infant party whose interest is in remainder. No costs will be allowed such guardian. (*Matter of Post*, 5 App. Div. 113.)

The appraisal of cash legacies is not necessary. (*Matter of Jones*, 10 St. Rep. 163; *Matter of Astor*, 20 Abb. N. C. 405.)

Cash legacies of $500 are taxable without appraisal. (*Opinion of Deputy Comptroller*, Aug. 13, 1891.)

A note upon which the administrators have begun suit should not be appraised as part of the taxable estate while the litigation thereupon is pending and undeter-

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mined. (*Matter of Westurn*, 152 N. Y. 102, reversing 8 App. Div. 59.)

Where a note of the legatee is included in a testator's residuary estate, its amount should be included in assessing the legacy tax. (*Matter of Twigg*, 15 Supp. 548; *Matter of Crosby*, 46 St. Rep. 442; *Matter of Bartlett*, 4 Misc. 380.)

An administrator has a lien and right of detention upon the distributive share of a legatee in an estate to the amount of his indebtedness to it, and such fact should be taken into consideration by the appraiser and such indebtedness appraised. (*Matter of Smith*, 14 Misc. 169.)

Annuities must be computed at their value at the death of the testator irrespective of the fact that the principal will thereby be diminished. (*Matter of Leavitt*, 4 Supp. 179.)

Mortgage debts should not be deducted by the appraiser from the amount of the personal property for the purpose of arriving at the value of the successions. The real estate is the primary fund out of which the mortgages are to be paid. (*Matter of Sutton*, 15 Misc. 659.)

If all the beneficiaries are taxable the tax on the life estate is to be paid from the income and that on the remainder from the principal. If the life tenant's interest is not taxable still the tax on the interests of the remaindermen is to be paid from the principal. (*Matter of Johnson*, 6 Dem. 146; *contra*, *Opinion of Attorney General*, Feby. 4, 1886.)

In case a life estate go to a person exempt, with a remainder within the act, the value of the life estate must be deducted from the fair value of the property, and the

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remainder is subject to the tax. (*Matter of Jones*, 19 Abb. N. C. 221.)

An appraiser cannot hear evidence in regard to the debts of the deceased, the funeral expenses and expenses of administration. He must make his report of the whole value of each legacy or distributive share at the point of transfer without making any deduction whatever.

The surrogate, however, may make such deductions, as it may fairly be inferred that the legislative intention was that the debts owing by the decedent should be deducted from the value of the estate so left by him. (*Matter of Millward*, 6 Misc. 425; *Matter of Ludlow*, 4 Misc. 594.)

The appraiser should report only on the property subject to taxation, not exemptions. (*Matter of Wallace*, 18 St. Rep. 387; *Matter of Astor*, 17 St. Rep. 737.)

When in doubt, the appraiser should report the property as liable to a tax. (*Matter of Astor*, 17 St. Rep. 787; *Matter of Hendricks*, 18 St. Rep. 989.)

The appraiser should report that he has appraised all property subject to the payment of the tax. (*Matter of Astor*, 17 St. Rep. 787.)

The appraiser must report the fair market value of the property he deems subject to the tax and all his proceedings and all facts known to him germane to the duties imposed by the order. (*Matter of Astor*, 20 Abb. N. C. 405.)

The legacies taxable should be reported by the appraiser irrespective of a provision in the will for the payment of the taxes thereon as an expense of administration. The residuary estate should not be reduced for the purpose of taxation by the amounts of such taxes. (*Matter of Swift*, 137 N. Y. 77.)

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The appraiser's fees may be paid out of any tax-money in the county treasurer's hands. (*Opinion of Attorney General*, Feby. 4, 1886.)

See notes under § 220 as to contingent and expectant estates and as to what property is liable to the tax.

§ 232. **Determination of surrogate.**—The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller. From such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser. The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The comptroller of the state of New York or any person dissatisfied with the appraisement or assessment and determination of tax, may appeal therefrom to the surrogate, within sixty days from the fixing, assessing and determination of

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tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken. The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all parties known to be interested therein, including the state comptroller. Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the comptroller of the state may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively, or erroneously made, make application to a justice of the supreme court of the judicial district in which the former owner of such estate resided, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive the compensation provided by sections two hundred and thirty and two hundred and thirty-one of this article. Such compensation shall be payable by the county treasurer or comptroller, out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceed-

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ings shall be taken and had by and before such justice as herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller and a certified copy thereof transmitted to the surrogate's court of the proper county.

Revised and re-enacted from Laws 1892, ch. 399, § 13, as amended by Laws 1895, ch. 556. Amended by Laws 1897, ch. 284, § 7.

An adjudication of the surrogate in a special proceeding under the collateral inheritance tax is necessarily limited to the subject of taxation and is not conclusive upon the rights of the parties arising from matters outside of the will. (*Amherst College* v. *Ritch*, 151 N. Y. 282, 343.)

The surrogate is the assessing and taxing officer and as such the representative of the state for the purposes relating to the appraisement and taxation of property.

He may proceed with the assessment of the tax without notice to any city official. (*Matter of Wolfe*, 137 N. Y. 205, reversing 66 Hun 389.)

Under the Act of 1885 it was not necessary that notice of an order of the surrogate assessing a tax be given to the person thereby affected, but only that a notice that the order had been made was necessary. (*Matter of Miller*, 110 N. Y. 216.)

Two methods of establishing the value of an inheritance and fixing the tax are provided by law, one by the aid of an appraiser and the other by the surrogate without such aid. Either method is complete in itself, and

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when one has been adopted it precludes any resort to the other. (*Matter of Davis*, 91 Hun 53.)

The principle that, in administering the statute, debts, commissions and expenses of administration should be deducted in ascertaining taxable values, accords with the general practice and is permitted by a just construction of the law. (*Matter of Westurn*, 152 N. Y. 93.)

Expenses of litigation over the will, although charged to the estate, cannot be deducted from the taxable value. (*Matter of Westurn*, 152 N. Y. 93.)

Where an appraiser made use of and exhausted every remedy under the law as it then was in force in appraising an estate, the state is bound by his acts and conclusions, unless he committed errors for which an appeal might have been taken. (*Matter of Smith*, 14 Misc. 169.)

Where the statute requires the grounds of the appeal to be stated, none except those specified can be considered. (*Matter of Davis*, 149 N. Y. 539.)

The statute ought to be construed so as to permit the raising, upon an appeal, of a question which did not enter into the original determination and which was first made known after the appeal had been taken and after the expiration of the sixty days. The surrogate would still have jurisdiction though the new question was not specified in the notice of appeal. (*Matter of Westurn*, 152 N. Y. 93.)

The failure to take advantage of the right of appeal from the assessment of a transfer tax within the time fixed by the statute is a bar to the subsequent raising of any question as to the correctness of the amount assessed. (*Matter of Hacket*, 14 Misc. 282.)

An error of the appraiser as to the value of a claim or asset should be corrected by appeal from the assessment

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and not by setting aside the appraisal. (*Matter of Smith*, 14 Misc. 169.)

It is not ground for setting aside a report of an appraiser to the effect that there are no claims against the estate, that a claim has actually been presented against the estate; the appellant must show that such claim is a *valid* one. (*Matter of Westurn*, 8 App. Div. 59; the decision in *Matter of Westurn*, 152 N. Y. 102, overruling the decision below, did not touch upon this point.)

Before the Act of 1887 the value of estates for life were computed according to the Northampton table. (*Matter of Robertson*, 5 Dem. 92.)

The district attorney may appeal from the decision of the surrogate on the judicial settlement of the accounts of executors, on behalf of the people, on the ground that the transfer tax has not been imposed and paid. (*Matter of Arnett*, 49 Hun 599.)

§ 233. **Surrogate's and district attorney's assistants in New York city and Erie county.**—The comptroller of the city and county of New York shall retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogates in the city and county of New York with an assistant, appointed by said surrogates, who shall be known as the transfer tax assistant, whose salary shall be four thousand dollars a year; a transfer tax clerk, whose salary shall be two thousand four hundred dollars a year; an assistant clerk, whose salary shall be one thousand eight hundred dollars a year, and a recording clerk, whose

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salary shall be one thousand three hundred dollars a year, said salaries to be paid monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of the said surrogates, necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogates respectively. The comptroller of the city and county of New York shall also retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the city and county of New York with an assistant, appointed by said district attorney, who shall be known as the transfer tax assistant, whose salary shall be three thousand dollars a year; a transfer tax clerk whose salary shall be two thousand four hundred dollars a year, and a surrogate's process server, whose salary shall be one thousand two hundred dollars a year, said salary to be payable monthly; and a further sum of money not exceeding five hundred dollars a year, to be used to pay the expenses of the said district attorney, for the conduct and prosecution of the proceedings mentioned in section two hundred and thirty-five of this chapter, said amounts to be paid upon the certificate and requisition of said district attorney. The county treasurer of the county of Erie shall also retain out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the county of

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Erie with an assistant, appointed by the said district attorney, who shall be known as the transfer tax assistant, whose salary shall be two thousand dollars a year, said salary to be paid monthly.

Revised and re-enacted from Laws 1892, ch. 399, § 14, as amended by Laws 1895, ch. 515.

Chapter 952 of the Laws of 1896, which became a law May 28, 1896, and took effect immediately, amended § 14 of chapter 399, Laws 1892, as amended by chapter 515, Laws 1895, by adding thereto the following:

"*The county treasurer of the county of Monroe shall also retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the surrogate of the county of Monroe with two clerks, to be appointed by said surrogate, and known as transfer tax clerks, and whose salary shall be seven hundred and fifty dollars per year each, payable monthly by the treasurer of the said county upon the certificate of the said surrogate; and also a further sum of money, not exceeding two hundred dollars per year, to be used to pay the expenses of the said surrogate of Monroe county necessarily incurred in the assessment and collection of said tax, and to be paid upon the itemized requisition of the said surrogate.*"

This Act, although amending a section of an Act repealed by the Tax Law, which became a law May 27th, 1896, but which was not to take effect until June 15th, 1896, must stand as a distinct law, being saved from repeal by section 33 of the Statutory Construction Law.

§ 234. **Surrogate's assistants in Kings county.**—The county treasurer of the county of Kings shall,

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from time to time, retain out of any funds which he may have in his hands, on account of taxes collected under this article, a sum of money sufficient to provide the surrogate of the county of Kings with an assistant, to be known as the transfer tax assistant and a transfer tax clerk. Such assistants shall be appointed by the surrogate, and the transfer tax assistant shall receive an annual salary of four thousand dollars, and the transfer tax clerk, an annual salary of two thousand dollars. Such salaries shall be payable monthly. Such county treasurer shall also retain, out of such funds, a further sum not exceeding five hundred dollars in any one year, for the necessary expenses of such surrogate, in the assessment and collection of such tax. Such salaries and said amount shall be paid upon the certificates and requisitions of such surrogate, respectively.

Revised and re-enacted from Laws 1893, ch. 199.

See *post*, p. 69, for the act (ch. 861, Laws 1895) providing for a transfer tax assistant in Westchester county.

See *post*, p. 70, for the act (ch. 953 Laws 1896) providing for a transfer tax clerk in Onondaga county.

See *post*, p. 71, for the act (ch. 375, Laws 1897) providing for transfer tax clerks in Oneida county.

§ 235. **Proceedings for the collection of taxes.**—If the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this article, after the refusal or neglect

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of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney, treasurer or comptroller of the county or the comptroller of the state, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of

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decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the treasurer or comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the treasurer or the comptroller of a county all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or comptroller is cited as a party under sections two hundred and thirty and two hundred and thirty-one of this article, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or comptroller therein, and to direct such county treasurer or comptroller to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax. And the comptroller of the state is hereby authorized, with the approval of the attorney-general, and a justice of the supreme court of the judicial district in which the former owner resided, to compromise and settle the amount of such tax in any case where controversies have arisen or may here-

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after arise as to the relationship of the beneficiaries to the former owner thereof.

Revised and re-enacted from Laws 1892, ch. 399, § 15, as amended by Laws 1895, ch. 378.

Proceedings by the district attorney for the enforcement and collection of a tax may be taken only where the tax is due and has not been paid.

The determination of the question of a liability to taxation does not belong exclusively to such proceedings.

An adjudication exempting certain legacies from liability to taxation is a complete bar to the maintenance of any subsequent proceeding by the district attorney to collect a tax thereupon. (*Matter of Wolfe*, 137 N. Y. 205 reversing 66 Hun 389.)

No costs can be allowed against the executors in proceedings by the district attorney where the executors pay the tax before the expiration of the 18 months. (*Frazer* v. *People*, 6 Dem. 174.)

Section 15 of chapter 399, Laws of 1892 (now section 235 of the Tax Law) provides for the taxation of costs in two events:

In proceedings in which the district attorney is successful the costs and disbursements to which he is entitled must be taxed in the manner provided by the rules of the court.

In proceedings in which he is unsuccessful he must show that fact and furnish evidence from which the court may be able to determine that there was probable cause for commencing the proceedings. (*Matter of McCarthy*, 5 Misc. 276.)

The allowance of costs to the comptroller on appeal to the surrogate is within the sound discretion of the

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surrogate, and should not be disturbed except for sufficient cause. (*Matter of Hoffman*, 76 Hun 399.)

§ 236. **Receipt from the county treasurer and comptroller.**—Any person shall upon the payment of the sum of fifty cents be entitled to a receipt from the county treasurer of any county or the comptroller of the city of New York, or at his option to a copy of a receipt that may have been given by such treasurer or comptroller for the payment of any tax under this article, under the official seal of such treasurer or comptroller, which receipt shall designate upon what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipt may be recorded in the clerk's office of the county in which such property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

Revised and re-enacted from Laws 1892, ch. 399, § 16.

§ 237. **Fees of county treasurer and comptroller.**—The treasurer of each county and the comptroller of the city and county of New York, shall be allowed to retain on all taxes paid and accounted for by him each year, under this article, five per centum on the first fifty thousand dollars, three per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition

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to the salaries and fees now allowed by law to such officers, except that in the counties of Erie and Monroe such per centum shall be credited to and belong to the county where collected.

Revised and re-enacted from Laws 1892, ch. 399. § 17, as amended by Laws 1893, ch. 704.

§ 238. **Books and forms to be furnished by the state comptroller.**—The comptroller of the state shall furnish to each surrogate, a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this

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article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

Revised and re-enacted from Laws 1892, ch. 399, § 18.

§ 239. **Reports of surrogate and county clerk.**—Each surrogate shall, on January, April, July and October first of each year, make a report in duplicate, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, one of which shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller. The county clerk of each county shall, at the same times, make reports in duplicate, containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property trans-

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ferred, one of which duplicates shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller.

Revised and re-enacted from Laws 1892, ch. 399, § 19.

§ 240. **Reports of county treasurer and of the comptroller of the city of New York.**—Each county treasurer and the comptroller of the city of New York shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

Revised and re-enacted from Laws 1892, ch. 399, § 20.

§ 241. **Application of taxes.**—All taxes levied and collected under this article shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

Revised and re-enacted from Laws 1892, ch. 399, § 21.

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§ 242. **Definitions.**—The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this article and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state, over which this state has any jurisdiction for the purposes of taxation. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer," "comptroller" and "district attorney," as used in this article shall be taken to mean the treasurer, comptroller or district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-nine of this article.

Revised and re-enacted from Laws 1892, ch. 399, § 22.

See notes under § 220 as to the meaning of the words "estate, property," etc.

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CHAP. 861, LAWS OF 1895.

AN ACT to further provide for the collection in the county of Westchester of the tax under the act relating to taxable transfers of property and the expenses thereof.

Became a law June 1, 1895, with the approval of the Governor. Passed, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The county treasurer of Westchester county shall annually retain out of the funds which may come into his hands on account of the tax collected under chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, entitled, "An act in relation to taxable transfers of property" and the acts amendatory thereof, sufficient money to pay the salary of a clerk in the surrogate's office of said county, to be known as the "transfer tax assistant," who shall be appointed by and at pleasure removed by the surrogate, whose compensation shall be fixed by said surrogate, not to exceed two thousand dollars a year, payable monthly.

§ 2. This act shall take effect immediately.

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CHAP. 953, LAWS OF 1896.

AN ACT to further provide for the collection in the county of Onondaga, of the tax under the act relating to taxable transfers of property and the expenses thereof.

Became a law May 28, 1896, with the approval of the Governor. Passed, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The county treasurer of Onondaga county shall annually retain out of the funds which may come into his hands on account of the tax collected under chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two entitled "An act in relation to taxable transfers of property" and the acts amendatory thereof, sufficient money to pay the salary of a clerk in the surrogate's office of said county, to be known as the "transfer tax clerk," who shall be appointed by and at pleasure removed by the surrogate of said county, whose compensation shall be fixed by said surrogate not to exceed one thousand two hundred dollars per year, payable monthly upon the certificate of said surrogate.

§ 2. This act shall take effect immediately.

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CHAP. 375, LAWS OF 1897.

AN ACT to authorize the appointment of transfer tax clerks by the surrogate of the county of Oneida, and to provide for their compensation.

Became a law April 29, 1897, with the approval of the Governor. Passed, three-fifths being present.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The surrogate of the county of Oneida may appoint and at pleasure remove not more than two clerks in his office, to be known as "transfer tax clerks," and fix their compensation, not exceeding in the aggregate the sum of twelve hundred dollars per annum. Such compensation shall be paid by the treasurer of the county of Oneida monthly upon the certificate of the surrogate; and for the purpose of providing funds therefor, the treasurer shall retain annually from moneys received by him from taxable transfers a sum not exceeding twelve hundred dollars.

§ 2. This act shall take effect immediately.

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FORMS.

No. 1.

PETITION FOR APPOINTMENT OF APPRAISER.

(Ante, § 230.)

SURROGATE'S COURT, ... COUNTY.

In the Matter of the Estate of

Deceased.

To Hon. ..... , *Surrogate:*

The petition of ..... respectfully shows upon information and belief:

First. That your petitioner is ..... and is therefore a person interested in the estate of the above decedent.

Second. That the said decedent died on the ..... day of ..... 189 , and that at the time of .... death .... was a resident of the ..... of..... , N. Y. (or, *a non-resident of this State.*)

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Third. That said decedent left a last will and testament, which was duly admitted to probate on the ..... day of ..... 189 , (or, *that said decedent left no last will and testament*) and that letters testamentary (or, *of administration*) were duly issued to ..... upon the ..... day of ..... 189 , and that the postoffice addresses of the ..... is (*are*) ..... .

Fourth. That as your petitioner is informed and believes, the property of said decedent or some interest therein is subject to the payment of the tax imposed by Article X. of the Tax Law, as amended, in relation to Taxable Transfers.

Fifth. That the following are all the persons interested in said estate and who are entitled to notice of these proceedings, including the treasurer of the county of ..... (or, *the comptroller of New York city*).

Name.	Nature of Interest.	Postoffice Address.

Wherefore, your petitioner prays for the appointment of some competent person as appraiser, as provided by law.

And your petitioner will ever pray.

Dated, ... , 189 .

.....

Petitioner.

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State of New York, }
County of ....., } ss.

..... , being duly sworn, says that he has ..... read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Sworn to before me, this }
.... day of ..... 189 . } .....

.....

.....

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No. 2.

ORDER APPOINTING APPRAISER.

(Ante, § 230.)

At a Surrogate's Court, held in and for the County of ....., at the Surrogate's office in the ..... of ....., N. Y., on the ..... day of ..... 189 .

PRESENT: HON. ..... SURROGATE.

In the Matter of the Estate of

Deceased.

It appearing to the satisfaction of the Surrogate that certain property left by the above-named ....., late of the ..... of ....., deceased, is subject to a State tax, under Article X. of the Tax Law, as amended, in relation to Taxable Transfers, now in pursuance of the statute in such case made and provided (*and upon the application of* .....),

I do hereby appoint ....., Esq., of ....., N. Y., appraiser, for the purpose of fixing the value of the property which is subject to the payment of said tax.

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And I direct said appraiser to give not less than ..... days' notice by mail, of the time and place of such appraisal to each of the following named persons:

Name.	Nature of Interest.	Postoffice Address.

And I further order and direct that at the time and place in said notice mentioned, the said appraiser shall appraise the said property at its fair market value, and forthwith make a report of his proceedings, in writing, to the Surrogate.

.....

Surrogate.

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No. 3.

OATH OF APPRAISER.

(Ante, § 230.)

SURROGATE'S COURT,.....COUNTY.

In the Matter of the Estate of

Deceased.

State of New York, } ss.
County of..... }

.....being duly sworn, doth depose and say that he is the appraiser appointed in this case by order of Hon. ....., Surrogate, dated the ..... day of ..... 189 , under and in pursuance of Article X. of the Tax Law, as amended, in relation to Taxable Transfers, and that he will faithfully and fairly perform the duties of such appraiser, according to the best of his understanding.

Sworn to before me, this
..... day of .....189 ,

.....

.....

.....

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No. 4.

NOTICE OF APPRAISAL.

(Ante, § 231.)

SURROGATE'S COURT, ... COUNTY.

In the Matter of the Estate of

Deceased.

To ...., County Treasurer, (or, *Comptroller of New York city*),

.....

.....

.....

Take notice, that having been appointed appraiser, in pursuance of Article X. of the Tax Law, as amended, in relation to Taxable Transfers, I shall appraise the taxable interests growing out of the estate of said deceased, at my office, No. ..... in the ..... of ..... N. Y., on the ..... day of ..... 189 , at ..... o'clock in the .....noon.

Dated, ... 189 .

.....

Appraiser.

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Due and sufficient service of the above notice is hereby admitted this ..... day of ..... 189 .

.....

..... *County Treasurer.*

(or, *Comptroller of New York city.*)

N. B.—Proof is required of the following facts:

(1.) Value of each parcel of real estate and encumbrances thereon.

In fixing such value, actual sales of neighboring real estate, similarly situated, during the year immediately preceding decedent's death must be taken into consideration.

(2.) Value of personal property. The value of securities having a quoted or market value should be ascertained as of the date of decedent's death, and for a reasonable period before and after that date.

(3.) Amount of debts, funeral expenses and expenses of administration.

The required value of property is in all cases the fair value at the date of death of decedent.

It is desired that a copy of the will and of the inventory, if any, be produced before the appraiser.

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No. 5.

APPRAISER'S SUBPŒNA.

(Ante, § 231.)

THE PEOPLE OF THE STATE OF NEW YORK.

To .....

....

.....

GREETING:

We command you, That (all and singular business and excuses being laid aside) you be and appear in your own and proper persons before.....an appraiser duly appointed by the Surrogate of.....County pursuant to Article X. of the Tax Law, as amended, in relation to Taxable Transfers, at his office, No..... in the.....of.....N. Y., on the.....day of .....189 , at....o'clock in the....noon, to testify all and singular what you may know in a certain proceeding now pending before said appraiser for the appraisal of property which was of....., deceased, and the transfer of which is liable to taxation under the said Act.

And for a failure to attend you will be deemed guilty of a contempt of court and liable to pay all the losses or damages sustained by the parties aggrieved and to forfeit Fifty Dollars in addition thereto.

Dated.....189 .

.....

Appraiser.

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No. 6.

REPORT OF APPRAISER.

(Ante, § 231.)

SURROGATE'S COURT.....COUNTY.

In the Matter of the Estate of

Deceased.

To Hon. .....*Surrogate:*

I, the undersigned, who was on the .....day of .....189 , appointed appraiser under and pursuant to Article X. of the Law, as amended, in relation to Taxable Transfers, to fix the fair market value of property, the transfer of which by the .....of ..... , deceased, is taxable under said Act, respectfully report as follows.

First. That forthwith after my said appointment I gave notice by mail, postage prepaid, to all persons named in the order appointing me such appraiser, and to all persons known to me to have a claim or interest in the property to be appraised, including the County Treasurer of .....County (or, *the Comptroller of*

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New York city) of the time and place at which I would appraise such property.

Second. I further report that at the time and place in said notice stated, to wit: at my office in the.....of .....N. Y., on the.....day of.....189 , and thereafter from time to time pursuant to adjournments regularly had, I appraised all the property which had been of the said deceased and the transfer of which was apparently subject to the payment of said tax, at its fair market value, as follows:

SCHEDULE "A."

Estate.....

Deceased.

Date of decedent's death,.....

Residence of decedent,.....

Property transferred by Will—Intestate Law,.....

Record of Will, Liber , Page , ...

Date of Letters,.....

Names, Titles and Addresses of Legal Representatives, Etc.,.....

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SCHEDULE "B."

Name and Residence of the Person or the Title and Location of the Corporation to whom Taxable Property has been Transferred.	Relationship of the Person.	General Description of the Property.	Nature of the Interest.	Value of Property or Interest.

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SCHEDULE "C."

GENERAL STATEMENT OF OTHER FACTS RELATIVE TO THE PROPERTY TRANSFERRED.

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The foregoing marked "Schedule A" shows the decedent's name, date of death and place of residence, whether the taxable property was transferred by will or the intestate laws, date of letters, and the names, titles and addresses of the legal representatives.

The foregoing marked "Schedule B" shows the name of the person or the title of the corporation to whom the taxable property was transferred, and opposite thereto the relationship of such person, a general description of the property transferred, and the nature of the interest, whether absolute or otherwise, and the fair market value of the property or interest at the time of the transfer.

The foregoing marked "Schedule C" contains a statement of other facts relative to the property transferred.

I do further report that the depositions of the witnesses examined before me in this proceeding are hereto annexed and marked "Schedule D."

"Schedule E" hereto attached contains other facts in relation to the tax on said estate reported for the information of the surrogate.

I do hereby further report that I have been actually and necessarily employed.....days in making said appraisals, etc., and that actual and necessary traveling expenses, including the fees paid witnesses and postage amount to $.....

Dated.....189

.....

Appraiser.

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State of New York, } ss.:
County of..... . }

.....

being duly sworn, says that he has read the above report by him subscribed, and knows the contents thereof, and that the same is true.

.....

Sworn to before me this..... }
day of.....189 . }

.....

.....

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No. 7.

APPRAISER'S BILL.

(Ante, § 231.)

(Duplicate.)

..... N. Y., ...189 .

Bill of....., for services and expenses as appraiser, under Article X. of the Tax Law, as amended, in relation to Taxable Transfers.

Estate of.	Days' Services.	Expenses.	Amount.

I certify that the foregoing bill is correct.

.....189 .

.....

Surrogate.

RECEIVED,.....N. Y., ...189 .

of ....., County Treasurer of.....

County..... ..Dollars.

$.....

.....

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No. 8.

NOTICE TO SUPERINTENDENT OF INSURANCE.

(Ante, § 232.)

SURROGATE'S CHAMBERS,
.....County.
.... N. Y., ...189.

TO THE SUPERINTENDENT OF THE INSURANCE DEPARTMENT,
STATE OF NEW YORK.

SIR:—You are requested to compute the present value of the following estates created by the ..... of .....deceased for the purpose of assessing thereupon a transfer tax:

(*e. g.*) Life use of $.....bequeathed to .....
aged .... years, said use to commence at the death of....., aged....years.

Yours respectfully,

.....
Surrogate.

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No. 9.

ORDER ASSESSING TAX.

(Ante, § 232.)

At a Surrogate's Court, held in and for the County of.....at the Surrogate's office in the.....of..... the.....day of.....189 .

Present—Hon.....*Surrogate.*

In the Matter of the Estate of

Deceased.

Upon reading and filing the report of..... heretofore by an order of this Court appointed appraiser in this matter, pursuant to Article X. of the Tax Law, as amended, in relation to Taxable Transfers, and after due consideration had, it is

Ordered, That the cash value of all the legacies, estates, annuities, life estates, terms of years, property and interests growing out of the estate of said deceased, and which are subject to tax under said Act, and the tax to

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which the same are liable, shall be and the same hereby are assessed and fixed as follows:

Beneficiary.	Present Value.	Tax.

Date of death of.....testat.....189 .

If said tax is paid within six months after said date, a rebate of five per centum thereon will be allowed. If not paid within eighteen months after date of death, it will bear interest from said date at the rate of ten per centum per annum.

Witness my hand and the seal of this office, the day and year first above written.

[L.S.]

.....

Surrogate.

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No. 10.

NOTICE OF TAX.

(Ante, § 232.)

SURROGATE'S COURT, ...COUNTY.

In the Matter of the Estate of

Deceased.

To.....

.....

Take notice, that upon the report of..... ....Esq., appraiser, which was filed in the office of the Surrogate of.....County, N. Y., on the..... day of.....189 , I have assessed and fixed the cash value of the property bequeathed and devised to you by and under the will (or, *descending and to be distributed to you as one of the heirs-at-law and next of kin*) of said deceased, at the sum of $.....

I have further assessed and fixed the tax to which said property is liable at the sum of $....., which said last mentioned sum is at once due and payable to the County Treasurer of.....County (or, *Comptroller of New York city.*)

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If said tax is paid before the.....day of.....189 , no interest will be charged, and a discount of five per centum will be allowed and deducted therefrom. After the.....day of..... 189 , interest on said tax at ten per centum per annum will be charged.

Dated..... 189 .

.....

Surrogate.

No. 11.

PETITION OF DISTRICT ATTORNEY.

(Ante, § 235.)

SURROGATE'S COURT, ...COUNTY.

In the Matter of the Estate of

Deceased.

To the Surrogate of the County of.....

The petition of.....of.....in said County, respectfully shows upon information and belief:

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First. That your petitioner is the district attorney of the County of .....

Second. That on or about the ..... day of ..... 189 , one ..... a resident of .... died leaving a last will and testament, which was duly admitted to probate on the ..... day of .... 189 , (or, *intestate*) and letters testamentary (or, *of administration*) were duly issued to..... upon the ..... day of ..... 189 , (or, *that no letters testamentary or of administration have been issued on said estate*), and that the postoffice addresses of the said ..... is (or, *are*) as follows:

.....

Third. That said decedent died seized or possessed of property within this state or subject to its laws of the value of $500 or over; and that the same or some portion thereof is subject to the tax imposed by Article X. of the Tax Law, as amended, in relation to Taxable Transfers.

Fourth. That the treasurer of the county of ..... (or, *comptroller of New York city*) has notified your petitioner in writing, of the refusal or neglect of the persons interested in said property and who are liable to pay said tax, to pay the same, and that no part of said tax has been paid.

Fifth. That the following are all the persons interested in said estate and who are entitled to notice of these

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proceedings, including the county treasurer of .....
..... county (or, *the comptroller of New York city.*):

Name.	Nature of Interest.	Postoffice Address.

Wherefore your petitioner prays that a citation issue herein to the above-named persons to appear before this court on a day to be designated therein and show cause why the said tax should not be paid.

Dated, the ..... day of ..... 189 .

.....
District Attorney of ..... County.

State of New York, }
County of..... } ss.:

..... being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

.....

Sworn to before me, this .... day of ..... 189 . }

.....

.....

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No. 12.

ORDER FOR CITATION.

(Ante, § 235.)

At a Surrogate's Court, held in and for the County of.....at the Surrogate's office in the.....of..... N. Y., on the.....day of..... 189 .

Present—Hon.....*Surrogate.*

In the Matter of the Estate of

Deceased.

On reading and filing the petition of....., district attorney of the County of.....it is

Ordered, That a citation issue to the persons named in said petition, returnable the.... ...day of.....189 , at.....o'clock in the.....noon, requiring them to show cause why a tax should not be paid upon the property of the above-named decedent pursuant to the provisions of Article X. of the Tax Law, as amended, in relation to Taxable Transfers.

.....

Surrogate.

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No. 13.

CITATION.

(Ante, § 235.)

The People of the State of New York, by the Grace of God free and independent, to.....

.....*send greeting:*

You and each of you are hereby cited and required personally to be and appear before our Surrogate of the County of....., at the Surrogate's Court in the..... of.....N. Y., on the.....day of.....189 , at .....o'clock in the.....noon of that day, then and there to show cause why a tax should not be paid upon the transfer of the property of.....,deceased, in accordance with the provisions of Article X. of the Tax Law, as amended, in relation to Taxable Transfers.

And such of you as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or if you have none to appear and apply for one to be appointed, or in the event of your neglect or failure to do so a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

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IN TESTIMONY WHEREOF we have caused the seal of our said Surrogate's Court to be hereunto affixed.

[L. S.] WITNESS, Hon....., Surrogate of said County, at the.....of....., the..... day of....., in the year of our Lord one thousand eight hundred and ninety.....

.....

Surrogate,

(or, *Clerk of the Surrogate's Court.*)

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No. 14.

AFFIDAVIT TO BE FILED WITH APPLICATION FOR LETTERS OF ADMINISTRATION.

(Ante, § 238.)

SURROGATE'S COURT,.....COUNTY.

In the Matter of the Application for Letters of Administration upon the Estate of

Deceased.

County of....., ss.

....

being duly sworn, says: h.....the petitioner herein. That the above named decedent died at the..... .... of ..... on the ..... day of ..... 189 .

The estimated value of the real property in this state, and of which decedent died seized, is .... dollars, subject to mortgage incumbrance of .... dollars.

The estimated value of the personal property of which said deceased died possessed, is ..... dollars.

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The names of the Widow, Husband, heirs-at-law, and next of kin, of said decedent, their places of residence and relationship to the decedent, are as follows:

Widow, Husband, HEIRS-AT-LAW AND NEXT OF KIN.

Name.	Postoffice Address.	Relationship.

Sworn to before me this.....
day of.....189 .

No. 15.

AFFIDAVIT TO BE FILED WITH APPLICATION FOR LETTERS TESTAMENTARY.

(Ante, § 238.)

SURROGATE'S COURT, ...COUNTY.

In the Matter of the Application for Letters Testamentary upon the Estate of

Deceased.

County of ..... ss.:

.....

being duly sworn, says: he ..... the petitioner herein. That the above named decedent died at the ... .of ..... on the ..... day of..... ..... 189 .

The estimated value of the real property in this State, of which said decedent died seized, is .... dollars, subject to mortgage incumbrance of .....dollars.

The estimated value of the personal property of which said deceased died possessed, is..... dollars.

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That the following is a full and correct list of the names, residences and relationship to decedent of all persons who are entitled to a legacy or devise under the will of said decedent, or by reason of partial intestacy, together with the character and value of such legacy or devise as far as the same can at present be determined.

Names.	Postoffice Address.	Relationship.	Value.

Sworn to before me this.....
day of.....189 .

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TABLE OF CASES CITED.

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Yours,
CHAS. F. BROWN,
Pres. Justice, 2d Appellate Division.

DEAR SIR — A careful examination of Mr. Headley's new work on "Assignments for the Benefit of Creditors" proves it to be an excellent work and one that will prove of much benefit to the profession. The concise yet complete manner in which the subject is handled, together with the careful compilation of all the authorities down to date, makes it of especial value to the practitioner, who is thus saved valuable time in getting directly at the kernel of the subject-matter.

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Justice Supreme Court, 2d Jud. Dist.

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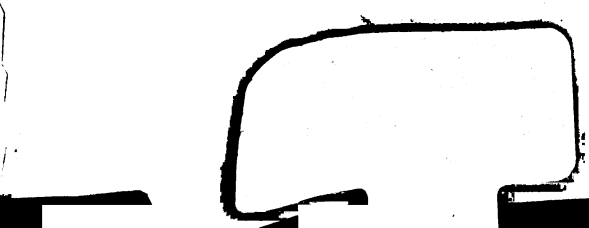

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